

## Federal Maritime Commission

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Commission or not filed with the Commission pursuant to the exemptions granted in 46 CFR Part 535; or any agreement filed with the Commission authorizing space chartering, or pooling of cargo or revenues with other ocean common carriers;

(e) Impose a fee, not to exceed \$1,000,000 per voyage;

(f) Request the collector of customs at the port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to a vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in subpart C;

(g) Request the collector of customs at the port or place of destination in the United States to collect any fees imposed by the Commission under paragraph (e) of this section;

(h) Request the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in subpart C, to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; or

(i) Take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

[58 FR 64910, Dec. 10, 1993. Redesignated and amended at 64 FR 8008, 8009, Feb. 18, 1999; 67 FR 39861, June 11, 2002]

### § 550.602 Penalty.

A common carrier that accepts or handles cargo for carriage under a tariff or service contract that has been suspended under § 550.505 or § 550.601 of this part, or after its right to use another tariff or service contract has been suspended under those sections, is subject to a civil penalty of not more than \$50,000 for each day that it is

found to be operating under a suspended tariff or service contract.

[64 FR 8009, Feb. 18, 1999]

## PART 551—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE

AUTHORITY: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876 (5) through (12); 46 CFR part 550; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

NOTE TO PART 551: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in this part 551 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

### § 551.1 Actions to adjust or meet conditions unfavorable to shipping in specific trades.

Whenever the Commission determines that conditions unfavorable to shipping exist in the United States foreign trade with any nation and issues rules to adjust or meet such conditions, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) and 46 CFR part 551, such rules shall be published in the FEDERAL REGISTER and added to this part.

[67 FR 39861, June 11, 2002]

## PART 555—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S.-FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

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AUTHORITY: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46

## § 555.1

U.S.C. app. 1710a), as amended by Pub. L. 105-258.

SOURCE: 54 FR 11533, Mar. 21, 1989, unless otherwise noted. Redesignated at 64 FR 8010, Feb. 18, 1999.

NOTE TO PART 555: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in this part 555 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

### § 555.1 Purpose.

It is the purpose of the regulations of this part to establish procedures to implement the Foreign Shipping Practices Act of 1988, as amended by the Ocean Shipping Reform Act of 1998, which authorizes the Commission to take action against foreign carriers, whose practices or whose government's practices result in adverse conditions affecting the operations of United States carriers, which adverse conditions do not exist for those foreign carriers in the United States. The regulations of this part provide procedures for investigating such practices and for obtaining information relevant to the investigations, and also afford notice of the types of actions included among those that the Commission is authorized to take.

[64 FR 8010, Feb. 18, 1999]

### § 555.2 Definitions.

For the purposes of this part:

(a) *Common carrier, marine terminal operator, ocean transportation intermediary, ocean common carrier, person, shipper, shippers' association, and United States* have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 U.S.C. app. 1702);

(b) *Foreign carrier* means an ocean common carrier a majority of whose vessels are documented under the laws of a country other than the United States;

(c) *Maritime services* means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

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(d) *Maritime-related services* means intermodal operations, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

(e) *United States carrier* means an ocean common carrier which operates vessels documented under the laws of the United States;

(f) *United States oceanborne trade* means the carriage of cargo between the United States and a foreign country, whether direct or indirect, by an ocean common carrier;

(g) *Voyage* means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade. Each inbound or outbound movement constitutes a separate voyage.

[54 FR 11533, Mar. 21, 1989. Redesignated and amended at 64 FR 8010, Feb. 18, 1999]

### § 555.3 Scope.

The Commission shall take such action under this part as it considers necessary and appropriate when it determines that any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country, result in conditions that adversely affect the operations of United States carriers in United States oceanborne trade, and do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

### § 555.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in § 555.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other

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component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a \$228 filing fee.

(b) Petitions shall set forth the following:

(1) The name and address of the petitioner;

(2) The name and address of each party (foreign government, agency or instrumentality thereof, carrier, or other person) against whom the petition is made, a statement as to whether the party is a foreign government, agency or instrumentality thereof, and a brief statement describing the party's function, business or operation;

(3) The name and address of each United States carrier alleged to be adversely affected, and a description, and if possible, documentation, of why each is considered by petitioner to be a United States carrier;

(4) A precise description and, if applicable, citation of any law, rule, regulation, policy or practice of a foreign government or practice of a foreign carrier or other person causing the conditions complained of;

(5) A certified copy of any law, rule, regulation or other document involved and, if not in English, a certified English translation thereof;

(6) Any other evidence of the existence of such laws and practices, evidence of the alleged adverse effects on the operations of United States carriers in United States oceanborne trade, and evidence that foreign carriers of the country involved are not subjected to similar adverse conditions in the United States.

(7) With respect to the harm already caused, or which may reasonably be expected to be caused, the following information, if available to petitioner:

(i) Statistical data documenting present or prospective cargo loss by United States carriers due to foreign government or commercial practices for a representative period, if harm is alleged on that basis, and the sources of the statistical data;

(ii) Statistical data or other information documenting the impact of the foreign government or commercial practices causing the conditions complained of, and the sources of those data; and

(iii) A statement as to why the period used is representative.

(8) A separate memorandum of law or a discussion of the relevant legal issues; and

(9) A recommended action, including any of those enumerated in § 555.8, the result of which will, in the view of the petitioner, address the conditions complained of.

(c) A petition which the Commission determines fails to comply substantially with the requirements of paragraph (b) of this section shall be rejected promptly and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to the filing of an amended petition.

[54 FR 11533, Mar. 21, 1989, as amended at 63 FR 50537, Sept. 22, 1998; 64 FR 8010, Feb. 18, 1999; 64 FR 23551, May 3, 1999; 67 FR 39861, June 11, 2002]

### § 555.5 Investigations.

(a) An investigation to determine the existence of adverse conditions as described in § 555.3 may be initiated by the Commission on its own motion or on the petition of any person pursuant to § 555.4. An investigation shall be considered to have been initiated for the purpose of the time limits imposed by the Foreign Shipping Practices Act of 1988 upon the publication in the FEDERAL REGISTER of the Commission's notice of investigation, which shall announce the initiation of the proceeding upon either the Commission's own motion or the filing of a petition.

(b) The provisions of part 502 of this chapter (Rules of Practice and Procedure) shall not apply to this part except for those provisions governing *ex parte* contacts (§ 502.11 of this chapter) and except as the Commission may otherwise determine by order. The precise procedures and timetables for participation in investigations initiated under this part will be established on an *ad hoc* basis as appropriate and set forth in the notice. Proceedings may include oral evidentiary hearings, but

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only when the Commission determines that there are likely to be genuine issues of material fact that cannot be resolved on the basis of written submissions, or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. In any event, investigations initiated under this part shall proceed expeditiously, consistent with due process, to conform with the time limits specified in the Foreign Shipping Practices Act and to identify promptly the conditions described in § 555.3 of this part.

(c) Upon initiation of an investigation, interested persons will be given the opportunity to participate in the proceeding pursuant to the procedures set forth in the notice. Submissions filed in response to a notice of investigation may include written data and statistics, views, and legal arguments. Factual information submitted shall be certified under oath. An original and 15 copies of such submissions will be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. Persons who receive information requests from the Commission pursuant to § 555.6 of this part are not precluded from filing additional voluntary submissions in accordance with this paragraph.

(d) An investigation shall be completed and a decision rendered within 120 days after it has commenced as defined in paragraph (a) of this section, unless the Commission determines that an additional 90-day period is necessary in order to obtain sufficient information on which to render a decision. When the Commission determines to extend the investigation period for an additional 90 days, it shall issue a notice clearly stating the reasons therefor.

[54 FR 11533, Mar. 21, 1989. Redesignated at 64 FR 8010, Feb. 18, 1999, and amended at 67 FR 39862, June 11, 2002]

#### § 555.6 Information demands and subpoenas.

(a) In furtherance of this part, the Commission may, by order, require any person (including any common carrier, shipper, shipper's association, ocean freight forwarder, or marine terminal

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operator, or any officer, receiver, trustee, lessee, agent or employee thereof) to file with the Commission any periodic or special report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate, and in the form and within the time prescribed by the Commission. Responses to such orders may be required by the Commission to be made under oath.

(b) The Commission may issue subpoenas to compel the attendance and testimony of witnesses and the production of records or other evidence as it deems necessary and appropriate in conducting an investigation under § 555.5 of this part.

(c) The Commission may, in its discretion, determine that any information submitted to it in response to a request (including a subpoena) under this section, or accompanying a petition under § 555.4, or voluntarily submitted by any person pursuant to § 555.5(c), shall not be disclosed to the public. To this end, persons submitting information for consideration in a proceeding or investigation under this part may indicate in writing any factors they wish the Commission to consider relevant to a decision on confidentiality under this section; however, such information will be advisory only, and the actual determination will be made by the Commission. In the event that a request for confidentiality is not accommodated, the person making the request will be so advised before any disclosure occurs.

[54 FR 11533, Mar. 21, 1989. Redesignated at 64 FR 8010, Feb. 18, 1999, and amended at 67 FR 39862, June 11, 2002]

#### § 555.7 Notification to Secretary of State.

Upon publication of a petition in the FEDERAL REGISTER, or on its own motion should it determine to initiate an investigation pursuant to § 555.5, the Commission will notify the Secretary of State of same, and may request action to seek resolution of the matter through diplomatic channels. The Commission may request the Secretary to

report the results of such efforts at a specified time.

[54 FR 11533, Mar. 21, 1989. Redesignated at 64 FR 8010, Feb. 18, 1999, and amended at 67 FR 39862, June 11, 2002]

#### **§ 555.8 Action against foreign carriers.**

(a) Whenever, after notice and opportunity for comment or hearing, the Commission determines that the conditions specified in § 555.3 of this part exist, the Commission shall take such action as it considers necessary and appropriate against any foreign carrier which it identifies as a contributing cause to, or whose government is a contributing cause to, such conditions, in order to offset such conditions. Such action may include, but is not limited to:

(1) Limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(2) Suspension, in whole or in part, of any or all tariffs or service contracts, including the right of an ocean common carrier to use any or all tariffs or service contracts of conferences in United States trades of which it is a member for such period as the Commission specifies;

(3) Suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers;

(4) Imposition of a charge, not to exceed \$1,000,000 per voyage;

(5) A request to the collector of customs at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to any vessel of a foreign carrier that is identified by the Commission under this section;

(6) A request to the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier that is identified by the Commission under this section to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at

the port or place in the United States from which it is about to depart for any other port or place in the United States; and

(7) Any other action the Commission finds necessary and appropriate to address adverse foreign shipping practices as described in § 555.3 of this part.

(b) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate U.S. Government agencies prior to taking any action under this action.

(c) Before any action against foreign carriers under this section becomes effective or a request under this section is made, the Commission's determination as to adverse conditions and its proposed actions and/or requests shall be submitted immediately to the President. Such actions will not become effective nor requests made if, within 10 days of receipt of the Commission's determination and proposal, the President disapproves it in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

[54 FR 11533, Mar. 21, 1989. Redesignated and amended at 64 FR 8010, Feb. 18, 1999; 67 FR 39862, June 11, 2002]

### **PART 560—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS**

Sec.

560.1 Purpose; general provisions.

560.2 Factors indicating conditions unduly impairing access.

560.3 Petitions for relief.

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560.5 Receipt of relevant information.

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560.7 Decision; sanctions; effective date.

560.8 Submission of decision to the President.

560.9 Postponement, discontinuance, or suspension of action.

AUTHORITY: 5 U.S.C. 553; secs. 13(b)(6), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(6), 1714, and 1716, as amended by Pub. L. 105-258; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a), as amended by Pub. L. 105-258.